IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 670 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITHALDAS SHANALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 670 of 1994

MR MEHUL SHAH for MR PK JANI for Appellant

MR KC SHAH, APP for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 07/07/2004

ORAL JUDGEMENT

The appellant (original accused) in Essential Commodities Summary Case No.20 of 1988, has challenged

the judgment and order of conviction and sentence dated 4.6.1994 by the learned Special Judge, Mehsana, convicting him for the offences punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (for short, "the Act"), sentencing him to suffer rigorous imprisonment for three months and to pay a fine of Rs.500/- and in default to undergo further rigorous imprisonment for seven days.

2. The appellant, at the relevant time, was granted licence to run a fair price shop in village Ankhol, Taluka Kadi of District Mehsana. Gagaji Nathaji, PW-2, who at the relevant time, was serving as Inspector of Civil Supplies Department, visited the shop of the appellant on 9th July 1986 and on inspection, he found the following irregularities:

(i) The opening stock was not written;

(ii) The complaint box was not kept;

(iii) Names of the villages and names of card holders were not stated;

(iv) Samples of Essential commodities were not taken;

(v) The names of customers were not specifically stated in the bill book;

(vi) There was no endorsement of the office of the Mamlatdar;

(vii) Names of card holders were not stated;

(viii) The names of customers in A.F.A. were not specifically stated; and

(ix) With respect to card holders, two duplicate bills were prepared and the stock for the same was disposed of.

3. After preparing the panchnama at the premises of the appellant and recording statements of the witnesses including the appellant, a report was sent to the Collector. The Collector, after issuing notice to the appellant and considering the reply submitted by the appellant, ordered to file criminal case. In compliance with the said direction, complainant Parbatsinh , PW-1 Exh.13, filed the criminal case under Clauses 23 and 24 of the Gujarat Essential Articles (Licencing, Control and

Stock Declaration) Order, 1981 and conditions No.4(2), 9(7) of the conditions of licence, in the Court of learned Special Judge, Mehsana, being registered as Essential Commodities Summary Case No.20 of 1988, on 21st December 1988.

After appreciating the oral evidence of Parbatsinh - PW-1; Gagaji Bihola - PW-3; Thakore Chhanaji Mohanji and other documents on record, the trial Court found the appellant guilty of the offences against him and therefore, passed the order of conviction and sentence, as stated above. Hence, the present appeal.

4. At the outset, it may be stated that on 6.9.18991, the appellant by filing a purshis, pleaded guilty and prayed for mercy. The learned Special Judge, by order dated 10th September 1991 accepted the purshis and convicted the appellant for the offence punishable under Sections 3 and 7 of the Act and ordered to suffer simple imprisonment till rising of the Court and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month. It appears that against the said order, the State filed Criminal Appeal No.680 of 1991. This Court, by its order dated 17.9.1993 set aside the judgment and order of sentence and remanded the matter to the trial Court for the purpose of taking evidence and dispose of the same on merits in accordance with law.

After the remand, the learned trial Judge recorded the evidence and disposed of the case in accordance with law.

5. Parbatsinh, PW-1, the complainant is examined at Exh.13. He, in his evidence, has given details about the inspection having been carried out at the shop of the appellant, by Inspector Shri Gagaji Bihola - PW2. The complainant has given details necessitated to file the criminal case against the appellant and has produced all the relevant records. In the cross examination, he has admitted that at the time of inspection on the day in question, he was not present and therefore, he has no personal knowledge. He has deposed on the basis of the papers. Thakore Chhanaji -PW-3 is examined at Exh.24. He is a Panch witness. However, his evidence is not useful in the prosecution as he has not supported the prosecution and was declared hostile. Gagaji Nathaji, PW-2 is the only witness who has inspected the shop of the appellant, prepared the panchnama and has also recorded the statements of the witnesses including the appellant. The appellant, in the statement recorded on

10.7.1986 has practically admitted all the allegations No.1 to 9. The learned trial Judge, after accepting the evidence of this witness and the statement of the appellant recorded by this witness, held that there is no reason for this witness to falsely involve the appellant.

6. Learned Advocate Mr.Mehul Shah appearing for the appellant has submitted that the statement of the appellant at Exh.20 recorded by this witness, i.e. PW-2 Gagaji Nathaji, could not have been relied on by the trial Judge for the simple reason that the appellant was induced to make the said statement. The appellant was in fact told that the statements will not be used against him and no proceedings shall be initiated against him.

7. It is true that the appellant, in cross examination, has made a suggestion to the above effect, however, the witness has denied the same. In the statement recorded under Section 313 of Cr.P.C., the appellant has not come out with the above version nor any suggestion was put to this witness in the cross examination and on the contrary, has explained that Gagaji Nathaji, PW-2 has recorded the statement as per his own whims and took his signature. The appellant has totally given a go-bye to the written reply filed in pursuance of the notice issued by the Collector. In the said reply, he has come out with total denial of the allegations made against him . In view of the inconsistent stand taken by the appellant, in my opinion, the learned trial Judge was justified in accepting the evidence of Gagaji Nathaji, PW-2 and the admission at Exh.20 made by the appellant. There is no reason for me to take a different view in the matter as far as the order of conviction passed by the learned trial Judge is concerned.

8. Learned Advocate Mr.Shah for the appellant submitted after inviting my attention to the allegations made against the appellant that they are technical in nature. He also submitted that considering the fact of advanced age of the appellant and more particularly the offence in question having taken place in the year 1986, a lenient view be taken in the matter. He invited my attention to the decision rendered by the Apex Court in the case of Jethabhai Valobhai Sanghada v. State of Gujarat reported in (1994) SCC (Criminal) 1486. In the said case, the Apex Court observed that the allegations made against the appellant are of technical violations and therefore, the case against the appellant would fall under clause (h)(i) of Section 3(2) of the Essential Commodities Act for which the minimum sentence is not

prescribed. Considering the fact that the offence said to have been committed in the year 1983 and the appellant has been in jail for about six weeks, the Apex Court while confirming the order of conviction, reduced the sentence to a period already undergone. As stated above, the facts in the case before the Apex Court are almost similar and therefore, in my opinion, the appellant is required to be convicted under Section 7(1)(a) of the Essential Commodities Act, for the offences committed under Section 3(2), Clause (h). In this view of the matter, the order passed by the learned trial Judge convicting the appellant for the offences punishable under Section 7(1)(a)(ii) is altered by convicting the appellant for the offences committed under Section 3(2), Clause (h). Considering the fact that the offence has been committed in the year 1986 and the appellant is aged about 70 years, in my opinion, the ends of justice will be met if the sentence of three months rigorous imprisonment is reduced to a period of 15 days simple imprisonment and to pay a fine of Rs.500/=, in default to undergo further simple imprisonment of seven days.

9. In the result, the appeal is partly allowed. The judgment and order of conviction and sentence dated 4.6.1994 passed by the learned Special Judge, Mehsana, in Summary Case No.20 of 1994 is quashed and set aside. The order of conviction and sentence is altered by convicting the appellant under Section 7(1)(a) of the Essential Commodities Act for the offence committed under Section 3(2), Clause (h) and the appellant is ordered to suffer simple imprisonment of 15 (fifteen) days instead of rigorous imprisonment of three months as ordered by the learned Special Judge, and to pay a fine of Rs.500/= (Rupees Five hundred only), in default to undergo simple imprisonment of 7 (seven) days.

(Kshitij R. Vyas, J.)

Sreeram.